



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SL

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,236	06/27/2001	Jeffrey H. Burbank	265/022	5534
21890	7590	09/28/2004		
PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			EXAMINER	BIANCO, PATRICIA
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/894,236	BURBANK ET AL.
Examiner	Art Unit	
Patricia M Bianco	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 August 2004.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-15,17 and 18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,4-15,17 and 18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: *Detailed Action*.

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/16/04 has been entered.

An amendment was filed with the RCE amending claims 1, 4 & 13, canceling claims 2, 3 & 16, and adding new claims 17 & 18. As a result, claims 1, 4-15, 17 & 18 are currently pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

Art Unit: 3762

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4-11, 14 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ash (5,536,412). Ash teaches of a hemofiltration system and method for using comprising a patient connection including blood withdrawal and return lines, a filter, a replacement/infusate fluid tank and delivery line, a pump, a blood particle sensor in the return line, and a sensor in the infusate line. The system pump rate is from 200 mL/min to 600 mL/min to achieve the desired clearance rate of 225 to 300 mL/min at this rate. The reservoir for infusate holds at least 1.5L of liquid. Ash has a computer for monitoring the blood flow rate and amount of infusate delivered to the patient. With respect to claims 6 & 10, the steps of repeating the procedure at least daily and for more than one week would have been obvious to one having ordinary skill in the art since, lacking any criticality in the specification, the modifying of these steps for an individual's treatment schedule would depend on each patient and therefore vary on a per patient basis. With respect to claim 4 requiring the blood withdrawal and return lines and filter being pre-attached, it would have been obvious to one having ordinary skill in the art to use a cassette having pre-attached tubing and a filter since it has long been known in the art to use such cassette members for extracorporeal blood treatment procedures. With respect to claim 7, the step of conducting the procedure at home

would have been obvious to one having ordinary skill in the art since, lacking any criticality in the specification, if home treatment is prescribed for a patient because it is deemed beneficial by the treating physician, this step would be determined on a per patient basis. With respect to claim 14, the use of a peristaltic pump for blood withdrawal and return would have been an obvious choice of a pump since it is known in the extracorporeal blood treatment art to use peristaltic pumps for blood withdrawal and return to a patient and Ash discloses that the filter is used with extracorporeal blood treatments. Ash discloses that there are various sensors, including blood sensors and flow sensors in the lines that communicate with the computer of the system. Ash further discloses that there are empty line sensors on all fluid-filled lines, which inherently includes the replacement fluid line (claim 14) (See col. 10, lines 3-35). Ash further discloses that the dialysis system of US Patent 4,661,246 (also Ash) is the preferred system for use with the disclosed system and method (col. 7, lines 51-53). In the '246 patent, the system includes a disposable dialysis cartridge (seen as applicant's "single member") having tubing lines attached thereto. Ash teaches that the cartridge is attached to the dialysis treatment machine thereby engaging the cartridge and treatment member and at the same time placing the cartridge and tubing in communication with the pump(s) such that the pump(s) are enabled to pump fluid through the tubing.

Claim 13, 17 & 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ash (5,536,412) in view of Kitaevich et al. (5,211,849). Ash discloses the invention

substantially as claimed, see rejection above, however, fails to disclose specifically that the computer (controller) has an alarm that activates when the difference between the blood flow rates exceeds a predetermined level, the measuring of pressure responsively to the difference, and that the flow sensor is an ultrasonic sensor. Ash discloses that there are various sensors, including blood sensors and flow sensors in the lines that communicate with the computer of the system. It would have been a matter of obvious design choice to choose an ultrasonic sensor since they are well known in the art.

Kitaevich et al. discloses a hemofiltration system and method including a controller and multiple sensors that send signals to said controller. One such sensor is a pressure transducer in the tubing to measure pressure (i.e. blood flow pressure). From the signals, the controller determines the actual blood flow pressure and determines if it is within or outside of the pressure limits. If it exceeds the preselected limits an alarm sounds (col. 6, lines 25-65). It would have been obvious to measure the pressure again in response to the difference at least once after the difference was measured to be sure the problem is being corrected. At the time of the invention it would have been obvious to one having ordinary skill in the art to modify the controller of Ash to include an alarm function as taught by Kitaevich et al., since it is important to monitor and be alerted to high blood flow rates.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ash as applied to claim 1 above, and further in view of Loiterman et al. (5,041,098). Ash **discloses** the invention substantially as claimed, see rejection supra. Ash, however,

Art Unit: 3762

fails to disclose specifically that the withdrawal and return lines are via a subcutaneous port.

Loiterman teaches of an implantable vascular access port that may be used in hemofiltration treatment systems. At the time of the invention, it would have been obvious to use an implantable vascular port in the process of Ash as taught by Loiterman. Use of an implantable port allows for easy connection and disconnection of the patient's vascular system to the hemofiltration system at each treatment.

Response to Arguments

Applicant's arguments filed 8/16/04 have been fully considered but they are not fully persuasive. Applicant has overcome the rejection of claim 1 under 35 USC 112, first paragraph and therefore the rejection has been withdrawn. Applicant further argues that the amendments to claims 1 & 13 distinguish over the rejections made under Ash and Kitaevitch. The examiner respectfully disagrees. Applicant argues the claim 1 recites, *inter alia*, "*fastening a member carrying said waste, replacement fluid, and blood withdrawal lines to a treatment machine; the member and treatment machine being configured such that by said step of connecting, said waste, withdrawal, and return lines are engaged by and actuated by said pump.*" However, this language is not exactly in the amended claims submitted 8/16/04. Amended claim 1 recites the step of "**engaging a single member** carrying said waste, replacement fluid, and blood withdrawal lines to a treatment machine; the member and treatment machine being configured such that by said step of **engaging a single member, said at least one**

Art Unit: 3762

pump is enabled to pump fluid through said waste, withdrawal, and return lines."

Ash discloses that the dialysis system of US Patent 4,661,246 (also Ash) is the preferred system for use with the disclosed system and method (col. 7, lines 51-53). Said disclosure is incorporated by reference. In the '246 patent, the system includes a disposable dialysis cartridge (seen as applicant's "single member") having tubing lines attached thereto. Ash teaches that the cartridge is attached to the dialysis treatment machine thereby engaging the cartridge and treatment member and at the same time placing the cartridge and tubing in communication with the pump(s) such that the pump(s) are enabled to pump fluid through the tubing. A copy of the '246 reference has been supplied with this communication.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Bianco whose telephone number is (703) 305-1482. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 13th, 2004

Patricia M Bianco
Primary Examiner
Art Unit 3762


PATRICIA BIANCO
PRIMARY EXAMINE